

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

FRANK FISCHER, an individual,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 2:05-cv-00763-MEF
)	
SYSCO FOOD SERVICES OF)	
CENTRAL ALABAMA, INC.,)	
et al.,)	
)	
Defendants.)	

MOTION TO REMAND

Comes Now the Plaintiff, Frank Fischer, and moves this Honorable Court for an order remanding this case to the Circuit Court of Montgomery County, Alabama. As grounds for, and in support of said motion, the Plaintiff states as follows:

1. That the Plaintiff's original complaint filed in the Circuit Court of Montgomery County, Alabama contained three counts pertaining to the Plaintiff's accident on June 29, 2004 and his termination on July 23, 2004. The first count sought benefits under the Alabama Workers' Compensation Act for the injuries sustained in the on-the-job accident and the second count alleged that the Plaintiff was terminated in retaliation for filing the workers'

compensation claim. The retaliatory discharge claim is brought pursuant to section 25-5-11.1 of the Alabama Workers' Compensation Code.

2. Section 1445 (c) of 28 U.S.C. renders claims that arise under the Alabama Workers' Compensation Law non-removable because the federal district court lacks subject matter jurisdiction of such claims. Section 1445 (c) reads:

“ A civil action in any State Court arising under the workmen's compensation laws of such State may not be removed to any district court of the United States.”

Further section 1447 (c) of 28 U.S.C. reads, in part:

“If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.” 28 U.S.C. § 1445 (c).

3. Case law in Alabama has held that claims for workers' compensation benefits are not subject to removal to federal district court and that the federal courts lack subject matter jurisdiction to hear workers' compensation claims and retaliatory discharge claims brought pursuant to the Alabama Workers' Compensation Law. Subra v. CMS Therapies, Inc.,

900 F. Supp. 407 (M.D. Ala. 1995); Reed v. Heil Company, 206 F. 3d 1055 (11th Cir. 2000); Nelson v. Dolgencorp, Inc., 2005 WL 1588688 (S.D. Ala. 2005).

4. The Defendant, Sysco, in paragraph six of its notice of removal states that counts One and Two of Plaintiff's complaint making claims for workers' compensation benefits and retaliatory discharge are non-removable under 28 U.S.C. § 1445 (c), and that those counts should be remanded to state court.

Wherefore, Premises Considered, Plaintiff prays this Honorable Court will remand to the Circuit Court of Montgomery County, Alabama, counts One and Two of Plaintiff's Complaint. Plaintiff prays for such other, further or different relief to which he may be entitled.

Respectfully Submitted,

s/Davis L. Middlemas

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CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2006, I provided a copy of the foregoing to counsel for Defendant via facsimile and U.S. Mail to the following address and fax number:

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